IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Crl.Revision No.1980 of 2006 (O&M)

DATE OF DECISION: SEPTEMBER 26, 2006

Balwinder Singh son of Kheta Singh

...PETITIONER

VERSUS

Balwinder Singh son of Hakam Singh

....RESPONDENT

CORAM: HON'BLE MR.JUSTICE SATISH KUMAR MITTAL

Present: Mr. Ashish Grover, Advocate,
for the petitioner.

...

The petitioner has filed this criminal revision against the judgment dated 13.9.2006 passed by Addl. Sessions Judge (Adhoc), Fast Track Court, Bathinda vide which the conviction of the petitioner recorded by the JMIC, Bathinda under Section 138 of the Negotiable Instruments Act vide judgment dated 24.5.2006 has been upheld in appeal preferred by the petitioner. However, the sentence awarded to the petitioner was reduced from one year rigorous imprisonment to 10 months rigorous imprisonment.

2. I have heard the counsel for the petitioner and gone through the judgments passed by both the Courts below.

3. In this case, on 1.3.1999, the petitioner borrowed a sum of Rs.1,75,000/- for house hold purpose at the rate of 2% per month from the complainant after execution of pronote and receipt. On 24.3.2001, the petitioner issued a cheque for Rs.2,48,000/- to make repayment of the loan amount. However, the said cheque on presentation to the bank was bounced

back due to the reason that payment of the cheque was stopped by the drawer and also that there was insufficient funds in his account. Accordingly, a notice was served upon the petitioner demanding the amount of the cheque. Since the petitioner did not make the payment within the prescribed period, therefore, a criminal complaint under Section 138 of the Negotiable Instruments Act (hereinafter referred to as `the Act') was filed against the petitioner.

4. The trial Court after appreciating the evidence available on the record, held that the signatures of the petitioner over cheque (Ex.C5) stood proved and the said cheque was issued by the petitioner against his existing legal liability. Accordingly, the petitioner was convicted under Section 138 of the Act.

5. Before the Appellate Court, a contention was raised on behalf of the petitioner that he be released on probation or his sentence be reduced. The Appellate Court after taking into consideration the fact that the petitioner is 75 years old, reduced the sentence of the petitioner from one year to 10 months rigorous imprisonment.

6. Counsel for the petitioner contends that both the Courts below while holding the petitioner liable for the aforesaid offence have not considered that there was no legal liability for issuing the cheque to the respondent as no loan was obtained by the petitioner. Counsel further contends that the signatures of the petitioner on the pronote are forged and fabricated as the petitioner is an illiterate person and used to put thumb mark. It has been specifically held by the trial Court that the documents Ex.D1 to Ex.D4, the summons received by the petitioner and the power of attorney executed by him in favour of his counsel, collectively reveal that

accused wilfully did not sign any document subsequent to issuance of Ex.C5 and Ex.C13 in order to escape his legal liability which had arisen upon the execution of pronote and receipt and issuance of cheque. Counsel for the petitioner then argued that keeping in view the age of the petitioner, he be released on probation. I do not find any merit in this contention of the petitioner as the said contention was also raised before the Appellate Court, which was declined. However, the sentence of the petitioner was reduced to 10 months rigorous imprisonment.

7. After hearing the counsel for the parties and going through the impugned judgments passed by both the Courts below, I do not find any illegality or infirmity in the same. Hence, criminal revision is dismissed.

September 26, 2006 (SATISH KUMAR MITTAL)
vkg JUDGE